

Pignotti Sheet Metal and Sheet Metal Workers' International Association, Local No. 3. Case 17-CA-10068

July 13, 1981

DECISION AND ORDER

Upon a charge filed on December 3, 1980, by Sheet Metal Workers' International Association, Local No. 3, and duly served on Respondent, Pignotti Sheet Metal, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 17, issued a complaint on January 9, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding. Respondent to date has failed to file an answer to the complaint.

With respect to the alleged unfair labor practices, the complaint alleges that Respondent has violated and is violating Section 8(a)(1) of the Act by interrogating employees on October 5, 1980, concerning their own and other employees' union membership, activities, and desires; by telling employees on October 16, 1980, it would physically injure a union representative if the latter spoke to employees; by informing employees during the week of December 8, 1980, that it would be futile for them to select the Union as their bargaining agent because Respondent would not recognize or bargain with the Union; by threatening employees on various dates in early and mid-October 1980 with termination or other reprisals if they did not tell the Union that they were no longer interested in representation; and that by the foregoing conduct Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and that Respondent thereby has been engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act, and that these unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

On April 6, 1981, the General Counsel filed directly with the Board a Motion for Summary Judgment based upon Respondent's failure to file an answer as required by Section 102.20 of the Board's Rules and Regulations, Series 8, as amended. Subsequently, on April 13, 1981, the Board issued an Order Transferring Proceeding to the Board and a Notice To Show Cause why the Gen-

eral Counsel's Motion for Summary Judgment should not be granted. Respondent has failed to file a response to the Notice To Show Cause.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing duly served on Respondent specifically states that unless an answer to the complaint is filed by Respondent within 10 days of service thereof "all of the allegations in the complaint shall be deemed to be admitted to be true and may be so found by the Board." The complaint issued on January 9, 1981. According to the Motion for Summary Judgment, counsel for the General Counsel, on March 5, 1981, was advised by Respondent by telephone that it would not file an answer to the complaint. Counsel for the General Counsel informed Respondent by letter dated March 6, 1981, that unless an answer was filed by March 11, 1981, the General Counsel would move for summary judgment by the Board. Nevertheless, Respondent failed to file an answer.

As noted, Respondent has not filed an answer to the complaint, nor did it file a response to the Notice To Show Cause and, therefore, the allegations of the General Counsel's Motion for Summary Judgment stand uncontroverted. No good cause to the contrary having been shown, in accordance with the rules set forth above, the allegations of the complaint are deemed to be admitted and are found to be true. We shall, accordingly, grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is now, and has been at all times material herein, a State of Nebraska corporation and is engaged in the installation and servicing of air-conditioning and heating systems and other sheet metal products in Omaha, Nebraska. Respondent in the course and conduct of its business operations within the State of Nebraska annually purchases goods and services valued in excess of \$50,000, directly from sources located outside the State of Nebraska.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Sheet Metal Workers' International Association, Local No. 3, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The 8(a)(1) Violations

On October 5, 1980, Respondent, by its owner Antonio G. Pignotti, interrogated its employees about their own and other employees' union membership, activities, and desires. On October 16, 1980, Respondent, by its owner Antonio G. Pignotti, told employees that it would injure a union representative if the latter spoke to employees. In the week of December 8, 1980, Respondent, by its owner Antonio G. Pignotti, informed employees that it would be futile for them to select the Union as their bargaining representative because Respondent would not recognize or bargain with the Union. Finally, on various dates in early and mid-October 1980, Respondent, by its owner Antonio G. Pignotti, threatened employees with termination or other reprisals if they did not tell the Union that they were no longer interested in representation.

Accordingly, we find that by all of the conduct described above, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing employees in the exercise of their rights guaranteed in Section 7 of the Act, and accordingly we find that Respondent did thereby engage in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Pignotti Sheet Metal is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Sheet Metal Workers' International Association Local No. 3, is a labor organization within the meaning of Section 2(5) of the Act.

3. By the acts described in section III, above, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Pignotti, Sheet Metal, Omaha, Nebraska, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating its employees concerning their own and other employees' union membership, activities, and desires.

(b) Telling employees that it will injure a union representative if the latter speaks to employees.

(c) Informing employees that it is futile for them to select the Union as their bargaining representative because Respondent will not recognize or bargain with the Union.

(d) Threatening employees with termination or other reprisals if they do not tell the Union that they are no longer interested in representation.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Post at its facility in Omaha, Nebraska, copies of the attached notice marked "Appendix."¹ Copies of said notice, on forms provided by the Regional Director for Region 17, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 17, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

¹ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT interrogate our employees concerning their own or other employees union membership, activities, and desires.

WE WILL NOT tell our employees that we will injure a union representative if he or she speaks to our employees.

WE WILL NOT inform our employees that it is futile for them to select the Union as their representative because we will not recognize or bargain with the Union.

WE WILL NOT threaten our employees with termination or other reprisals if they do not tell the Union that they are no longer interested in representation.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

All our employees are free to become or remain, or refrain from becoming or remaining members of the Sheet Metal Workers' International Association Local No. 3, or any other labor organization.

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